STATE OF MICHIGAN

COURT OF APPEALS

KELLY S. STEINMAN,

Plaintiff-Appellant,

v

ROBERT L. STEINMAN,

Defendant-Appellee.

UNPUBLISHED
November 7, 1997

No. 202718
Huron Circuit Court
LC No. 96-009784-DM

Before: Jansen, P.J., and Doctoroff and Gage, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment of divorce, challenging the grant of primary physical custody of the parties' minor son, Nicholas R. Steinman, to defendant. We remand for the circuit court to make additional findings.

Plaintiff first argues that the circuit court's findings regarding "best interests of the child" factors (a), (b), and (j) were against the great weight of the evidence. See MCL 722.23; MSA 25.312(3). We disagree. When reviewing child custody matters, this Court does not undertake a de novo review. We will not disturb findings of fact unless the evidence "clearly preponderate[s] in the opposite direction." *Fletcher v Fletcher*, 447 Mich 871, 879; 526 NW2d 889 (1994).

With regard to factor (a), the love, affection and other emotional ties between the parties and the child, the circuit court found that a more significant bond existed between defendant and the child than existed between plaintiff and the child. This finding was not against the great weight of the evidence. The record contained evidence that both parties engaged in many activities with the child in order to establish an emotional bond. However, the Friend of the Court investigator testified, based on his interviews with the parties, that a stronger bond existed between the child and defendant. Therefore, the circuit court's finding on this factor was not against the great weight of the evidence.

With regard to factor (b), the capacity and disposition of the parties to give love, affection and guidance, and to continue a religious upbringing, the circuit court found that this factor favored neither party. It noted that defendant possessed a greater capacity and disposition to give the child love and affection but that plaintiff made greater efforts to further the child's religious education. Plaintiff argues

that defendant's long hours of employment and sometimes irresponsible behavior render this finding against the great weight of the evidence. We disagree. The record contains evidence that defendant's work schedule fluctuates, allowing him sufficient time to provide the necessary guidance to the child. Moreover, the record indicates that plaintiff's own actions contributed to a situation she deemed irresponsible, which was the child spending time at defendant's place of employment. Thus, this finding was not against the great weight of the evidence.

With regard to factor (j), a party's facilitation of a close relationship between the child and the other party, the circuit court found that this factor favored neither party. Plaintiff argues that although both parties have behaved poorly in the facilitation of a relationship between the child and the other party, it was defendant's conduct that was more egregious. We disagree. The record contains evidence of equally vicious behavior exhibited by both parties and supports the finding of the circuit court.

Plaintiff also argues that the failure of the circuit court to address certain best interests factors constitutes error requiring reversal. We agree that the circuit court erred in failing to address all of the best interest factors and that this error was not harmless. The Michigan Court Rules provide that "brief, definite, and pertinent findings and conclusions on the contested matters are sufficient without over elaboration of detail or particularization of facts." MCR 2.517(A)(2). In *Fletcher, supra* at 883, the Supreme Court held that this rule is not to be interpreted as requiring a recitation of all the evidence considered. The court, however, is required to consider and explicitly state its findings and conclusions regarding each of the statutory factors. *Bowers v Bowers (On Remand)*, 198 Mich App 320, 328; 497 NW2d 602 (1993). Upon a finding of error, this Court must remand the case for reevaluation, unless the error was harmless. See *Fletcher*, *supra* at 889. In *Dempsey v Dempsey*, 409 Mich 495, 498-499; 296 NW2d 813 (1980), an error regarding the analysis of one factor was not considered to require reversal in light of the fact that two other factors favored one party while none of the factors favored the other party. In short, correction of the error offered no possibility that the balance of the "best interests" factors would shift in the other party's favor.

In the present case, the circuit court's findings were replete with omissions. First, with regard to factor (h), the home, school, and community record of the child, the court addressed the home record, but omitted any reference to the child's school record for which considerable testimony was placed on the record. The court's failure to address an entire section of a factor does not meet the requirements set forth in MCR 2.517 and *Fletcher*, *supra* at 883. Even more seriously, factors (f) and (k) were totally disregarded in the circuit court's findings.

These omissions do not constitute harmless error. According to the circuit court's findings, defendant was favored on two of the statutory factors. The circuit court omitted the analysis of two statutory factors and provided inadequate findings on a third factor. Therefore, the situation is not like *Dempsey, supra,* where the dispute over one factor could not shift the balance of all of the factors. If the court found that factors (f), (h), and (k) favored plaintiff, the best interests of the child arguably would be served by an order directing that plaintiff be granted physical custody.

Accordingly, we remand to the circuit court for complete findings on factors (f), (h), and (k). If upon remand, the circuit court finds that the statutory factors continue to favor defendant, the circuit court's prior order will remain in effect. If, however, the circuit court finds that the best interests of the child would be served by some other custody arrangement, the circuit court shall amend its judgment accordingly. MCR 7.208(A). This Court does not retain jurisdiction.

/s/ Kathleen Jansen
/s/ Martin M. Doctoroff
/s/ Hilda R. Gage